

**Dissenting Views
to the Judiciary Committee Report on
H.R. 3925, the “Digital Tech Corps Act of 2002”**

I dissent from the Committee Report on H.R. 3925. While improvements were made in the bill during the Committee’s markup of the legislation, troubling aspects of the bill remain that fall outside of the Judiciary Committee’s jurisdiction and were, therefore, unaddressed at markup. Primary among these concerns is the concern that, while the bill purports to enhance training for high tech and government workers, no training component is required by the bill. Additional concerns are discussed herein.

The “Digital Tech Corps Act” would create an exchange program for mid-level information technology workers in the government and private sector. The central goal of the bill is to create “cross-pollenization” between the public and private sector information technology workforce so that employees of each will receive specialized training unavailable with their current employers. The bill is also designed to address purported shortage of information technology workers in the federal government, where half of that workforce may retire by 2006.

Background

On March 20, 2002, the full Judiciary Committee marked up the bill and voted to report it favorably out of Committee by voice vote after adopting two amendments. Rep. Jerrold Nadler (D-NY) offered an amendment on my behalf which would prevent private workers on loan to the government from revealing confidential information and trade secrets acquired during their federal government assignments. Previously, the bill allowed private sector workers to disclose such information only three years after leaving their federal assignment. The Committee also adopted an amendment by Rep. Lamar Smith (R-Tex.) which protects private sector employee’s private pay and benefits during their federal government assignment.

Specifically, the bill allows, but does not require, that upon the request of a private sector organization, an agency can “detail” one of its employees to a private sector organization or accept the assignment of a private sector employee to the agency. An employee who is eligible to participate in this program must work in IT management, be an exceptional employee and someone who is expected to assume an increased managerial role in the future. For government employees to participate, they must be career appointees, as opposed to political appointees, as serve under a GS-11 level or above.

Any employee of a federal agency must agree that they will serve in civil service after being detailed to a private sector organization for at least the length of the detail. Additionally, the bill specifies that federal employees will continue to receive federal employment benefits to the extent such benefits are not duplicative of those provided by the private entity and Federal employees are covered by the Federal Tort Claims Act while on detail to the private sector.

Any employee of a private sector organization detailed to a government agency may be

paid by the private entity and is covered by a number of the same laws as federal employees. Both government and private sector employees are limited to six month to one year assignments, and thereafter may receive additional three month extensions up to one additional year.

Private sector employees who participate in this program are subject to a number of ethics rules. First, such employees may not lobby the agency to which they were detailed for one year after the detail expires. Second, such employees are barred from disclosing trade secrets discovered during the course of a detail. Third, such employees are prohibited for one year from assisting an employer in getting a contract from the agency to which they were detailed. Fourth, such employees may not disclose bidding information discovered during the course of a detail.

Concerns Raised by H.R. 3925

_____ I am concerned that the bill fails to require that employees participate in any training program that will assure that the central goal of the program is met. There is no requirement that the assignment accomplish any defined training objectives. Federal employees will simply be sent upon request from the private sector, regardless of whether that assignment meets the government's needs. During the markup of this bill in the Government Reform Committee, Rep. Henry A. Waxman (D-CA) offered an amendment that would have established a comprehensive training program for information technology workers, run by the Office of Personnel Management. This amendment was defeated. If the goal of this program is to train government workers, then it should be run by people with expertise in training who can keep the overall training needs of the government's information technology workforce in mind. Rep. Waxman's amendment would have ensured this.

My second concern involves employees access to trade secrets. While – because of the enactment of the Conyers amendment – the bill does restrict the disclosure of trade secrets and other proprietary information uncovered by a private sector employee on detail, I remain concerned about whether private sector employees should have access to this information at all. It appears manifestly unfair to give a private sector employee detailed to the federal government access to a competitor's most confidential information, information the competitor gave to the government upon assurances it would remain confidential.

A related issue is the degree to which private sector employees detailed to the government should be permitted to personally participate in a decision, approval, recommendation or advisory process involving or affecting the financial interests of his or her private company. The Office of Legislative Counsel has suggested that this is not a valid concern because these detailed employees would be covered by existing federal laws which prohibit involvement in matters in which an employee has a personal financial interest. I believe, however, that this should be made explicit in the bill.

My third concern is that the bill does not require that the number of employees detailed to the private sector be matched by private sector employees detailed to the agency. As such, there are concerns that government employees may be used to assist ailing private sector companies. Furthermore, there are no limits on the number of federal employees who can be sent out to work

in these companies at taxpayer expense. The bill would also require taxpayers to pay for both private sector employees who are detailed to the government and government employees who are detailed to the private sector. The costs of private sector employee's salary and benefits while on assignment to the government could be billed back to the federal government as overhead on certain contracts.

The lack of safeguards in these areas raises several important questions. At a time when the federal government expects to face a shortage in the government's information technology workforce, this program will allow even more of these federal workers to leave their current positions by sending some of them into the private sector and it is, therefore, unclear how that achieves the goal of meeting federal information technology needs. Some have suggested that it does not because the actual purpose of the bill is to create a holding place of temporary jobs for under employed tech workers whose companies have been hit by the economic downturn. It also sends federal employees, paid with federal taxpayer money, to private corporations to help those companies advance their information technology work and profits.

Finally, I am concerned about the cost of this new program. The Congressional Budget Office has estimated that the costs of this program will be approximately \$500,000. I believe this estimate is very low because there is no limit on the number of federal employees who may be on assignment to the private sector at a time, those employees may need to be replaced by contract employees or new hires outside of this program, and the federal government may get charged for some of the private employees salaries and benefits under government contracts. Nonetheless, this bill does not provide for any new authorizations, budgeting authority or tax expenditures.

Conclusion

While I am pleased that this bill was improved in the Judiciary Committee markup, I remain concerned that in a number of critical ways, most notably a lack of training requirements, the bill is not narrowly tailored to its stated purpose. Because the bill could further efforts of corporate espionage, expand corporate welfare, excessively burden the federal budget, and fail to accomplish its core goal of training federal and private sector workers, I dissent from this legislation.

John Conyers, Jr.